

DOCUMENT RESUME

01994 - [A1172163]

[Claim for Benefits as a Result of Administrative Upgrade of Former Army Member's Discharge]. B-188041. April 22, 1977. 4 pp.

Decision re: William E. Stewart; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel Management (805).

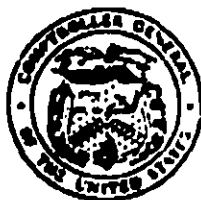
Organization Concerned: Veterans Administration; Department of the Army.

Authority: 37 U.S.C. 112, 112d. 38 U.S.C. 211(a). 38 Comp. Gen. 523. 43 Comp. Gen. 115. Goldstein v. United States, 131 Ct. Cl. 228 (1955). Honey v. United States, Ct. Cl. 187-74. B-183900 (1976).

Former Army member claimed benefits based on a change in his military records to reflect an honorable rather than an undesirable discharge. The discharge absolutely terminates a member's contractual relationship with the Government regarding military pay and allowances, and subsequent changes in the discharge do not create any right to military pay for periods after the discharge date. (RRS)

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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-188041

DATE: April 22, 1977

MATTER OF: William E. Stewart

- DIGEST:**
1. Claims for veterans benefits which may arise as the result of administrative upgrade of former Army member's discharge from undesirable to honorable are within the exclusive jurisdiction of the Veterans Administration. 38 U.S.C. 211(a) (1970).
 2. Army member's discharge absolutely terminates contractual relationship with the Government with regard to military pay and allowances, and subsequent change in character of discharge from undesirable to honorable does not affect member's status with respect to his separation from service and does not create any right to military pay for periods after date of discharge.
 3. Where Government records relating to existence of claim have been destroyed, and there is no other documentation available from any source to prove or disprove the validity of a claim, this Office has no alternative but to disallow the claim.

This action is in response to a letter from Mr. William E. Stewart, 540 Jefferson Street, Lexington, Kentucky 40508, a former member of the United States Army, which constitutes an appeal from the settlement by our Claims Division dated July 26, 1976, of his claim for amounts believed due by reason of a change in his military records to reflect an honorable rather than undesirable discharge from the United States Army on June 30, 1949.

The file shows that the claimant served on active duty with the United States Army in an enlisted status between January 8, 1943, and March 3, 1946, and was awarded an honorable discharge. After his return to civilian life, he was apparently

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involved in an automobile accident on May 31, 1947, resulting in a pedestrian death. As a result of the death, he was indicted for manslaughter by civil authorities in Fayette County, Kentucky. On June 14, 1948, the claimant reenlisted in the Army for a term of 3 years, but in May 1949 civil authorities requested that the Army produce him because of the still pending manslaughter charge. In response to this request, the Army returned the claimant to Fayette County, Kentucky, from his assigned post in Europe and on June 6, 1949, the criminal charges against him were dismissed. However, on June 30, 1949, the claimant was issued an undesirable discharge from the Army based on fraudulent enlistment.

It further appears that on July 31, 1974, the Army Board for Correction of Military Records acted on an application for change of records submitted by the claimant. The Board concluded there was no evidence his 1948 enlistment was obtained through fraudulent misrepresentation of a material fact and recommended his military records be corrected to show an honorable discharge from the Army on June 30, 1949.

Following these proceedings, Mr. Stewart filed claim for amounts he believed were due him as the result of the change in the character of his discharge. On July 26, 1976, the Claims Division of this Office issued settlement in his favor in the amount of \$6.87, this amount representing the difference between the mileage allowance he might have received for travel to his home of record upon discharge, if that discharge had been honorable, and the cost of train and meal tickets he apparently actually received for such travel upon his separation from service under conditions other than honorable. See 37 U.S.C. 112, 112d (1946 ed.).

The claimant has expressed dissatisfaction with this result. In his letter of appeal he states he has been denied his veterans benefits and wants such benefits restored to him. He expresses the further belief that he is entitled to an award of retroactive military pay and allowances from the time of his discharge on June 30, 1949, to the present time. In other correspondence he has also indicated he believes certain unspecified amounts were improperly withheld from his military pay prior to his discharge, and he feels he is entitled to compensation for this.

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With respect to the claimant's entitlement to veterans benefits, 38 U.S.C. 211(a) (1970) expressly provides that decisions of the Administrator of Veterans Affairs on any question of law or fact concerning a claim for benefits is final and conclusive and no other official or court of the United States shall have the power or jurisdiction to review such decision. This Office, therefore, has no authority to change or reverse any decision of the Veterans Administration pertaining to the entitlement to or payment of benefits to any former service member, including the claimant.

Concerning the claimant's entitlement to military pay and allowances subsequent to June 30, 1949, the date of his release from service, it is to be noted that the action of the Army Board for Correction of Military Records did not render his separation from the Army null and void or make any change in his records to show continuation on active duty beyond the date of such separation. Instead, the claimant's records were simply changed to reflect a discharge under honorable conditions effective June 30, 1949. An enlisted member's discharge absolutely terminates any contractual relationship with the Government with regard to entitlement to military pay and allowances, and a subsequent change in the character of the discharge from undesirable to honorable does not affect the member's status with respect to his separation from the service. See 38 Comp. Gen. 523 (1959); 43 Comp. Gen. 115 (1963). See also Goldstein v. United States, 131 Ct. Cl. 228 (1955), cert. denied 350 U.S. 888 (1955); and Hornby v. United States, Ct. Cl. No. 187-74, decided June 16, 1976. It is therefore our view that the claimant's entitlement to military pay and allowances was terminated upon his discharge on June 30, 1949, and the subsequent upgrade in the character of that discharge created no rights to such pay for any period after that date.

With regard to the claimant's contention that unspecified amounts of military pay and allowances were improperly withheld from him prior to his discharge on June 30, 1949, the burden of proof as to the existence and nonpayment of a valid claim against the Federal Government is on the person asserting such a claim. Ordinarily, proof of the validity of a claim can be found in Government records. In this connection, the United States Army Finance and Accounting Center has advised this Office that no records are presently in existence in that organization's files which might substantiate or refute such contention. In addition, the National Personnel Records

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Center, St. Louis, Missouri, the repository for records such as would be involved in this case, has also advised that if such records were, in fact, on file with that activity prior to July 12, 1973, they were destroyed in the fire that occurred there on that date.

In situations such as this, where records which may prove or disprove the validity of a claim have been destroyed, this Office has no alternative but to disallow the claim. B-183900, August 3, 1976.

Accordingly, the settlement of our Claims Division is sustained.


Deputy Comptroller General
of the United States